

Education Report: Updates to New Zealand Qualifications Authority (NZQA) Rules

Date:	12 February 2021	NZQA Priority:	High
Security Level:	In confidence	Report No.	CR 21668

	Action Sought	Deadline
Minister of Education	<p>a. note that NZQA consulted with stakeholders on <i>pro forma</i> updates to NZQA Rule sets to align with the Education and Training Act 2020, from 27 October – 9 November 2020</p> <p>b. note that NZQA consulted directly with private training establishments on a single rule change to the <i>Student Fee Protection Rules</i> in addition to the updates from 27 October – 16 November</p> <p>c. note that the NZQA Board approved the proposed updates and rule change to NZQA Rules outlined in this report on 28 January 2021</p> <p>d. approve the updates and rule change under section 452(5) of the Education and Training Act 2020, by signing and dating in the spaces provided for each attached Rule set</p> <p>e. note that, should you approve the updates and change to NZQA Rules, they will be presented in the House of Representatives as they are a disallowable instrument, not a legislative instrument, for the purposes of the <i>Legislation Act 2012</i> and must be presented to</p>	

	the House of Representatives under section 41 of that Act.	
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Enclosure/Appendix: Yes

Round Robin: No

Contact for Telephone Discussion (if required)

Name	Position	Telephone	Cellphone	1 st Contact
Eve McMahon	Deputy Chief Executive, Quality Assurance	04 463-4374	██████████	√
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The following departments/agencies have seen this report:

- Ministry of Education
 Tertiary Education Commission
 Other (specify)

Minister's Office to Complete:

- Noted
 Seen
 Approved
 Needs change
 Withdrawn
 Overtaken by Events
 See Minister's comments
 Declined

Referred to:

Comments:

Updates to New Zealand Qualifications Authority (NZQA) Rules

Executive Summary

- NZQA seeks your approval under section 452(5) of the Education and Training Act 2020 (the Act), for proposed *pro forma* updates to NZQA Rule sets to align with the new Act and a single rule change to the *Student Fee Protection Rules* (SFP Rules).
- The Act came into effect on 1 August 2020 and incorporates and replaces the previous Education Act 1964 and 1989. The *pro forma* updates reflect the Act and its differently numbered provisions, and include minor corrections to the Rules for clarity.
- A single rule change has been made to the SFP rules that will ensure private training establishments (PTEs) cannot retain students' fees on the grounds of a 'no-show' by a student, when the student should receive a full refund less the statutory amount PTEs are entitled to retain. No other rule changes have been made.
- NZQA consulted directly with tertiary education organisations (TEOs), engaged with peak bodies, and communicated with senior secondary schools on the *pro forma* updates. The rule change to the SFP Rules was consulted on directly with PTEs as it does not affect any other kind of TEO.
- The updated Rule sets aim to ensure that NZQA Rules are clear and up to date in aligning with the Act. The change to the SFP Rules will help to safeguard students' interests.

Recommended Action

It is recommended that you:

- a. **note** that NZQA consulted with stakeholders on *pro forma* updates to NZQA Rule sets to align with the new Act, from 27 October – 9 November 2020
- b. **note** that NZQA consulted directly with PTEs on a single rule change to the *Student Fee Protection Rules* in addition to the updates from 27 October – 16 November
- c. **note** that the NZQA Board approved the proposed *pro forma* updates and rule change to NZQA Rules outlined in this report on 28 January 2021
- d. **approve** the updates and rule change under section 452(5) of the Education and Training Act 2020, by signing and dating in the space provided for each attached Rule set

Approve Not approved

- e. **note** that, should you approve the amendments to NZQA Rules, they will be presented in the House of Representatives as they are a disallowable instrument, not a legislative instrument, for the purposes of the *Legislation Act 2012* and must be presented to the House of Representatives under section 41 of that Act.

Proactive Release Recommendation

NZQA recommends

- f. **agree/disagree** that this report is proactively released as part of the next publication of documents

Agree Not agreed



Alex Bidois
Acting Chief Executive
12 February 2021



Hon Chris Hipkins
Minister of Education
..15../.03../2021

Updates to New Zealand Qualifications Authority (NZQA) Rules

Purpose of Report

1. This report seeks your approval, under section 452(5) of the Education and Training Act 2020, of proposed *pro forma* updates to NZQA Rules and a single change to the *Student Fee Protection Rules* (SFP Rules) set out in the Appendix to this report. These updates and rule change were approved by the NZQA Board on 28 January 2021.

Background

Aligning NZQA Rule sets with the Act

2. The Education and Training Act 2020 (the Act) came into effect on 1 August 2020 and incorporates and replaces the Education Act 1964 and 1989. The Act:
 - a. introduces a new structure that follows the journey of students through education starting with early learning, moving to schooling and then tertiary and vocational training
 - b. retains large parts of the existing education legislation, which have been transferred into the Act unchanged and differently numbered.
3. NZQA creates and administers Rules under section 452 of the Act. These Rules set NZQA's requirements in relation to its statutory functions.
4. NZQA's Rules refer to the parent legislation as appropriate. The new Act means NZQA's Rules needed to be updated to reflect the different name of the Act and its new sections. As well as updating references, new 2021 versions of the Rule sets were made so they are fully made under the new Act rather than partly under the 1989 Act and partly under the new Act.
5. The change from the Education Act 1989 to the new Act has not changed the requirements of NZQA's Rules. The updates to the Rules are *pro forma* only. Some minor corrections for clarity and ease of understanding were also made. These 'quality of life' changes clarify rather than change the rules and are included in the new 2021 versions of the Rule sets.
6. NZQA consulted directly with tertiary education organisations (TEOs), engaged with peak bodies, and communicated with senior secondary schools on the *pro forma* updates and corrections from 27 October – 9 November 2020. Consulting directly was considered appropriate over a full public consultation as the changes are mainly *pro forma* reflecting legislation and minor corrections. As expected, no submissions were received in response to the updates.
7. The following NZQA Rules have been updated and attached in the Appendix:
 - a. Annual Fee Rules 2021
 - b. Consent to Assess Against Standards on the Directory of Assessment Standards Rules 2021
 - c. Directory of Assessment Standards Listing and Operational Rules 2021
 - d. NZQF Industry Training Programme Approval Rules 2021
 - e. NZQF Offshore Programme Delivery Rules 2021
 - f. NZQF Programme Approval and Accreditation Rules 2021
 - g. NZQF Qualification Listing and Operational Rules 2021
 - h. PTE Enrolment and Academic Records 2021

- i. PTE Registration Rules 2021
- j. Quality Assurance (including External Evaluation and Review (EER) Rules 2021
- k. Student Funds Trust Deposition Exemption Rules 2021
- l. Student Fee Protection Rules 2021
- m. Transitional Industry Training Organisation Quality Assurance Rules 2021
- n. Training Scheme Rules 2021.

Adding a new rule to the Student Fee Protection Rules

8. NZQA has identified a need for a rule change in the *Student Fee Protection Rules* (SFP Rules) that will help to safeguard students' financial interests. The rule change would affect only PTEs. NZQA is proposing the change to ensure that students are treated fairly in the event they do not participate in a course (programme or training scheme).
9. The rule change will ensure PTEs cannot retain students' fees on the grounds of a 'no-show' by a student, when the student should receive a full refund less the statutory amount PTEs are entitled to retain. Students have been adversely affected by some PTEs keeping their fees or drawing down student loans even when the PTE was aware the student would not show up or participate, leaving the student out of pocket in paying for a full course but with no education or training provided to them.
10. This issue has been highlighted in recent legal action relating to the closure of Best Pacific Ltd, where many (Pacific) students were affected by the practice of the PTE drawing down student loans even though the student did not show up and had not submitted a formal written withdrawal application.
11. NZQA consulted directly with PTEs on the proposed SFP Rule change, as well as the updates and corrections, from 27 October - 16 November 2020. We also engaged with PTE peak bodies, Quality Tertiary Institutions (QTI) and Independent Tertiary Education New Zealand (ITENZ), on the rule change before consulting. Both peak bodies supported the rule change.
12. NZQA received five responses from PTEs. One respondent expressed agreement with the proposed change, and the others raised questions or concerns. The main concerns (received from PTEs delivering international education) were that:
 - a. the change appears to remove the consequences for students who make late withdrawal decisions, and excuses them from providing any notification to PTEs
 - b. the change could make it easier for an international student to withdraw from their study, and use the refunded money for other personal purposes. It could also make it easier for international students to stay on as illegal workers.
13. The change could result in some students not contacting the PTE to formally withdraw. We consider this change would and should place greater responsibility on the PTE to clearly outline their withdrawal process including the expectation to notify the PTE if they withdraw, and for the PTE to follow up with a student who is not participating to confirm their intention. The withdrawal provisions of the Act are silent on the method of withdrawal, however some PTEs, such as BEST Pacific, had very formal processes that some students found too difficult to carry out. It will be very obvious when a student fails to turn up or has departed during the refund period. In such cases they should be treated as having withdrawn under the provisions of the Act.
14. PTEs continue to be allowed by the withdrawal provisions to keep a certain proportion of the fees of domestic and international students to contribute to their administrative costs.

15. We consider it unlikely that the proposed change would lead to international students using their fee money for personal purposes, or in students withdrawing and seeking illegal work. In most instances the fees will be held with a trustee, who has the responsibility to ensure the refund is returned to the appropriate bank account in the student's home country or transferred to an alternative education provider in New Zealand. A PTE is required to notify an immigration officer when an international student withdraws from a programme or training scheme to help ensure they do not stay on illegally, so an international student doing this would risk losing their visa and being sent home.
16. Having considered the submissions, NZQA is proceeding with the rule change as the benefits for students outweighs the concerns expressed. NZQA will communicate with the PTE sector and respond to individual submitters about their questions and concerns.

Authority to approve the Rules

17. NZQA may make Rules under section 452 of the Education and Training Act 2020. To be valid, the Rules require the approval of the NZQA Board and the Minister of Education. The Minister of Education holds the Prime Minister's delegation of legislative responsibilities of the Education and Training Act 2020, which includes section 452(5) under which the Rules are made.
18. On 28 January 2021, the NZQA Board approved the proposed updates and rule change to NZQA Rules attached in the Appendix to this report. NZQA now seeks your approval under section 452(5) of the Act.
19. Once you have approved the updates and rule change to NZQA Rules, they must be presented in the House of Representatives. These NZQA Rules will come into effect 28 days after you have approved them.

Communications plan

20. NZQA will publicise the updates to NZQA Rule sets through the following channels:
 - a. a news item including a consultation summary on the NZQA website
 - b. a follow up email to the non-university tertiary sector and a separate communication to the PTE sector
 - c. an article in the NZQA newsletter eQuate.